The Solicitors' Journal

VOL. LXXXVII. **Saturday, February 27, 1943.** No. 9

Current Topics: War Criminals — Defence Regulations — Controversial Legislation — Hire-Purchase (Control) Order, 1943 — The Future of Hire-Purchase — Procedure at Company Meetings—Recent Decisions 69
Production Injurious to Public Interest (*continued*) 71
A Conveyancer's Diary 72
Correspondence 72
Landlord and Tenant Notebook .. 74
Points in Practice 74
Parliamentary News 74
To-day and Yesterday 75
Review 75
Obituary 75
Notes of Cases—
Tilley *v.* Wales (Inspector of Taxes) .. 76
Harman *v.* Crilly and A. W. Robey, Ltd. 76
War Legislation 76
Court Papers 76

Editorial, Publishing and Advertisement Offices: 29–31, Breams Buildings, London, E.C.4. Telephone: Holborn 1403.
SUBSCRIPTIONS: Orders may be sent to any newsagent in town or country, or, if preferred, direct to the above address.
Annual Subscription: £3, *post free*, payable yearly, half-yearly, or quarterly, in advance. *Single Copy:* 1s. 4d., *post free.*
ADVERTISEMENTS: Advertisements must be received not later than first post Tuesday, and be addressed to The Manager at the above address.
CONTRIBUTIONS: Contributions are cordially invited, and must be accompanied by the name and address of the author (not necessarily for publication) and be addressed to The Editor at the above address.

Current Topics.

War Criminals.

THE strongest justification for the "unconditional surrender" proclamation at Casablanca is that the present war is being waged against a gang of criminals who have by fraud and violence managed to obtain temporary control of the government of a great nation, and who have since then transgressed, either personally or through their agents, all known bounds of wickedness and crime. A legal footnote to the Casablanca proclamation was added by the Lord Chancellor on 18th February, speaking to members of St. Stephen's Club. He said that the allied governments did not intend to resort to mass reprisals against the German people, but to mete out just and sure punishment to ringleaders responsible for the organised murder of thousands of innocent people and for atrocities which violated every tenet of the Christian faith. The guilty should include not only the highly placed individuals who had inspired and directed these monstrous crimes, but also those who in cold-blooded ferocity had organised and taken a definite and responsible part in carrying them out. No amount of proclaimed resolve would be any good unless the individuals to be tried and punished were brought before a tribunal, and unless the evidence of their guilt was collected, recorded and made available at their trial. Referring to the clauses in the Treaty of Versailles relating to the punishment of criminals of the last war, the Lord Chancellor said that one difficulty was that the people to be accused could not be got hold of. In the end all that happened was that at Leipzig a few trials were staged of individuals accused of a few war crimes, like sinking a hospital ship, and precious little punishment they got, if, indeed, they were not acquitted at once or let out soon afterwards. No one was likely to repeat that mistake. Our European allies and ourselves attached the greatest importance to the stipulation he made on 7th October, 1942, in the House of Lords, that the successful close of the war should include provision for the surrender of war criminals. There was already collected, said his lordship, a great deal of detailed information which would be put before the United Nations Commission for the Investigation of War Crimes and form part of the dossier. His view was that in the great majority of cases these war crimes would be best dealt with either by national courts which were empowered for the purpose, or by military tribunals which, among other things, had the great advantage of speedy action. Military courts set up by the victors might properly deal with criminal outrages committed by the enemy against the victors' fellow subjects, whether civilians or soldiers, in the area in which the court was functioning. The British Government would be prepared to discuss with the other allied governments concerned the setting up of international courts, but there were several difficulties. Perhaps at some future date we shall hear more about these difficulties, for if the ideal of international courts could be translated into practice, they would appear to be most logically suited to the trial of crimes against the fundamental laws of mankind. It may well be that the criminals are too many and their crimes too vast to yield to the slow methods of ordinary criminal trial. We must nevertheless guard as much as possible against anything in the nature of mere revenge, which is as another Lord Chancellor once said "a kind of wild justice." It will be a big step forward from this low aim if we can by our new institutions after the war justify our own belief in our civilisation, a belief which has been sadly shaken during the last thirty years. Quite apart from this aim, our own instincts of self-preservation demand that this should not happen again, and only the award of deterrent punishment by properly constituted and permanent courts, whether they are international or, as LORD MAUGHAM suggested in the Lords on 11th February, national courts, can give us the necessary protection from like horrors in the future.

Defence Regulations.

IN answer to a question in the House of Commons by Squadron-Leader DONNER as to the number of defence regulations, orders, rules, bye-laws and directions made under the Emergency Powers (Defence) Act, 1939, the Deputy Prime Minister stated that it was the practice to publish periodically volumes containing up-to-date collections of defence regulations. The Defence (General) Regulations numbered 318 and there were forty-three codes of Defence Regulations dealing with special subjects, such as finance, administration of justice, etc. The number of statutory rules and orders made under the defence regulations and now in force was about 2,100. That figure included directions, which, being of general application, were published as statutory rules and orders. As regards directions given in individual cases such, for example, as directions given under Defence Regulation 60J to individual householders about removing goods which have been salvaged from houses damaged by air raids, it would be impracticable to give a statistical statement. After some supplementary questions, Sir IRVING ALBERY asked if the Deputy Prime Minister's attention had been drawn to the remarks of magistrates when passing lenient sentences, that it was impossible for people to be adequately aware of the meaning of these various regulations. Mr. ATTLEE replied that it had always struck him as being difficult to assume that everyone knew the law. He had spent some time studying it and he knew little about it. Most lawyers will endorse Mr. ATTLEE'S remarks. The fault does not lie with the law that it is vast, but with our vastly complicated society, which it is the business of the law to regulate. In war-time society and industry undergoes a vast transformation and a multiplicity of new regulations becomes essential. We should be more than human, however, if we did not occasionally sigh for a little more intelligibility in our statutes.

Controversial Legislation.

WE referred in a "Current Topic" last week (*ante*, p. 59) to the difficulty of interpreting the ambiguous phrase "controversial legislation." Writing in *The Times* of 15th February, Sir RANDLE HOLME stated that the Leader of the House had ruled that in spite of the opposition of 116 members, the Catering Bill was not controversial, and therefore not within the terms of the Government pledge which prevents the introduction of controversial legislation. This view, wrote Sir RANDLE, differs from that taken on a previous occasion, when the Bill which subsequently became the Solicitors Act, 1941, having passed the Lords, reached the House of Commons, the Attorney-General stated that it could not proceed if it were controversial. Four members put their names on the order paper as objecting to some clauses of the Bill, and the Attorney-General therefore informed The Law Society that as it was controversial, it could not be proceeded with. Consequently The Law Society, stated Sir RANDLE, had to appease the objecting members by making certain concessions, whereby the Bill became non-controversial and passed into law. It may be that the answer to this fundamental and serious criticism of the party truce is that the word "non-controversial," like many another word in the political vocabulary, must be given an elastic and not a rigidly legalistic interpretation. In other words the Government pledge cannot be expected to cover all legislation which might possibly rouse opposition. Some such legislation must, on account of its urgency, be put through the Parliamentary machine. Other measures, not so urgent, but nevertheless opposed, may not find a place within the limited Parliamentary time-table on a weighing of priorities with other claims. Such was possibly the reason for the deferment of the withdrawn parts of the Solicitors Act, 1941. Whether it was right to class those parts of the measure as controversial which were opposed by only four members may well be a matter for debate. In the last resort the

Government in war-time must remain judge in its own cause on questions both of what priorities to assign to legislative action, and of whether a measure is within the terms of their pledge not to introduce controversial legislation.

Hire-Purchase (Control) Order, 1943.

AN advance notice of the objects of the Hire-Purchase (Control) Order, 1943, which comes into force on 1st March, has already appeared in this journal. The order has now been printed, and its severe restrictions will repay detailed scrutiny. It commences (para. 1 (1)) with a prohibition against selling, agreeing to sell, or offering to sell, any price-controlled goods under the provisions of a hire-purchase agreement, or providing financial facilities for the purpose of enabling price-controlled goods to be purchased under the provisions of a hire-purchase agreement. The prohibition extends to purchasing, agreeing to purchase or offering to purchase any price-controlled goods offered for sale in contravention of para. 1 (1). The definitions and exceptions are of the greatest interest. "Price-controlled goods" has the meaning assigned in s. 20 of the Goods and Services (Price Control) Act, 1941. This is a somewhat complicated definition, including price-regulated goods (under the 1939 Act) and goods for which a maximum price has been fixed by an order under the 1941 Act. It includes a formidable list of articles. "Hire-purchase agreement" means a hire-purchase agreement as defined by s. 28 of the Liabilities (War-Time Adjustment) Act, 1941, and any agreement which for the purpose of that Act would be treated as a single agreement made at any time, must be treated, for the purposes of the order, as a single agreement made at that time. That definition refers back to the definition in s. 21 of the Hire-Purchase Act, 1938, and includes instalment purchases where the property remains in the seller until performance of the conditions in the agreement. The severity of the order is mitigated by a schedule of goods to which the order does not apply. The first exceptions consist of price-controlled goods in respect of which a maximum charge is fixed for performing the service of making and operating a hire-purchase agreement in relation thereto by an order made under s. 2 of the Goods and Services (Price Control) Act, 1941, whether made before (e.g., in the case of perambulators and furniture) or after the date on which this order comes into operation. This seems to open the door for future relaxation of the strictness of the order. The second exception relates to goods comprised in agreements substituted for previous hire-purchase agreements comprising the same goods, and so substituted only in order to give effect to the desire of the hirer to rearrange the instalments payable under the original hire-purchase agreement. War damaged goods are excepted, provided that they were at the date of the damage subject to a hire-purchase agreement made before 1st March, 1943, and a number of other conditions are fulfilled. These are (1) that the hirer has requested the owner to effect or procure the effecting of the necessary repairs, or that the hirer has agreed to procure or effect the repairs; (2) the hirer must have made a written request to the owner to resell the goods to him under a new hire-purchase agreement; and (3) the owner must have agreed to enter into a new hire-purchase agreement for a term not less than that necessary to enable the aggregate of a number of sums referred to below to be repaid by instalments of the same amount as were being paid under the original hire-purchase agreement. These sums are (*a*) the amount outstanding under the original hire-purchase agreement; (*b*) the repair charge, i.e., the charge agreed or made for such repairs as were reasonably necessary to remedy the war damage; and (*c*) the delivery charges necessarily and properly incurred by the owner in respect of the collection of the goods to which the owner is to carry out or procure the carrying out of repairs and the delivery of such goods after repair. Motor cycles and motor cycle combinations, component parts and accessories are also excluded from the operation of the order.

The Future of Hire-Purchase.

THE restrictions imposed on the hire-purchase trade by the new Hire-Purchase (Control) Order, 1943, may give economists an opportunity to reflect upon the benefits resulting from complete freedom to conduct hire-purchase business and to balance the benefits against the disadvantages of the system. Experience of the working of the order may also provide some knowledge of how far the system is socially necessary and of the complementary questions of how far it can be dispensed with. The theory and practice of instalment selling, or as it is sometimes called, consumption credit, in America, was brilliantly analysed by Professor SELIGMAN in his treatise on the subject in 1927, and that authority was convinced after intensive investigation and reflection that an entirely new chapter was opening up in economic science and economic life. "After more than a century devoted to the elaboration of the principles and technique of banking and commercial credit designed to fit the industrial revolution," the author saw the development of "consumer credit" as a revolution "scarcely inferior to its predecessor." This revolution was at the outbreak of the war too far advanced to be checked in any way by the necessary restrictions imposed on the trade by the Hire-Purchase Act; 1938, and its arrest by control orders in war-time is only an incident in the general shrinkage of civil production and consumption. His Honour Judge Sir GERALD HURST, K.C., in his recent work "Closed Chapters," wittily comments on the system: "One of the mysteries of human conduct is why adult men and women all over England are ready to sign documents they do not read, at the behest of canvassers whom they do not know, binding them to pay for articles which they do not want, with money which they have not got. Except in relation to buying houses with the help of building societies—often, though not always a sound venture—credit purchases and hire-purchases are often the curse of the poor. Sometimes, of course, they serve a good purpose in the case of married couples with small resources if the husband is in permanent good employment, but the liability to misfortune is all too common." Few are in a better position to estimate the vices of the system than a county court judge, but it cannot be judged as a whole by its failures, which loom large in the county court, but by its smooth working in supplying the masses with the products of industry which they most need. Any attempt in peace time to restrict consumption when industry is expanding will be doomed to failure, and the answer to the abuses of the system must be sought in the provision of greater security against loss of earning power through unemployment and sickness.

Procedure at Company Meetings.

NEW proposals by the Committee of the Stock Exchange aim at ensuring that shareholders shall have an effective voice in decisions taken at company meetings. A notice recently issued by the committee states that military service, duties of national importance, press of business and desirability of restricting travel, make it impossible for many shareholders to be present in person. In these circumstances the committee urges directors in such cases to take steps to ensure that every shareholder shall be in a position to form a fair opinion on the merits of the proposals, and may have an effective voice in the decisions. The following procedure is recommended to this end: (1) circulars and statements to shareholders should be unambiguous, clear and simple; they should set out the alterations proposed, so that an opinion can be formed without reference to documents which are not readily available, like articles of association; (2) where the statutory notice is seven days, a longer notice (fourteen days if possible) would be desirable; (3) in such cases stamped proxy forms should be sent out, and should be so worded that the shareholder may vote either for or against the resolutions in question. The committee emphasises that the procedure is desirable in normal times as well as in war-time. It is therefore taking steps to make the necessary alterations in the rules governing new issues. The committee confidently hopes that all directors of companies whose shares are already dealt in or quoted on the London Stock Exchange will co-operate in this matter, and that similar facilities will also be extended to holders of other securities, such as debentures and notes. The proposals in their present form have the approval of the London Chamber of Commerce, the Institute of Chartered Accountants, the Society of Incorporated Accountants and Auditors, the Association of Investment Trusts and the British Insurance Association Investment Protection Committee. The Chartered Institute of Secretaries has also given its approval to the proposals, but are not able to give complete support to the "two-way proxy" proposal. The adoption of these proposals should be a big step forward in the direction of securing a complete shareholders' democracy.

Recent Decisions.

In *Smith* v. *Davey, Paxman & Co. (Colchester), Ltd.*, on 10th February (*The Times*, 11th February), the Court of Appeal (SCOTT, GODDARD and DU PARCQ, L.JJ.) held that where a workman was injured in a workshop in which no explosives were used but his injuries were due to another workman sawing with a hacksaw at a German aeroplane cannon shell which had been brought into the factory from outside by one of the employees, the accident to the workman did not come within the Personal Injuries (Emergency Provisions) Act, 1939, as the injury was too remote from the "impact" contemplated by s. 8 (1) (*b*) of that Act, but that the injury was the result of an accident arising out of the workman's employment within the Workmen's Compensation Act, 1925, and the workman was therefore entitled to compensation under that Act.

In *Larrinaga Steamship Co., Ltd.* v. *R.*, on 15th February (*The Times*, 16th February), ATKINSON, J., held that where a ship chartered by the Government had unloaded a cargo of munitions at St. Nazaire in October, 1939, and was ordered to proceed at once to Qiaberon to return in convoy to Newport, and not to wait until the next day as desired by the master, damage to the ship resulting from a stranding after leaving St. Nazaire was not a result of a warlike operation within the meaning of the Government terms of charter so as to be a risk falling on the charterer; but the order to go to Qiaberon to join a convoy was an order within the employment of the master, within the meaning of the charter, and the dominant cause of the stranding was his compliance, against his better judgment, with the order given, so as to make the charterer responsible for the damage.

Production Injurious to Public Interest.

(*Continued from p. 63.*)

11. *Police Documents*, Mr. Bevir points out in his letter, *supra*, are brought within the category of State documents (at p. 636 of [1942] A.C.); yet the police, he states, are municipal servants.

From the illuminating judgment of McCardie, J., however, in *Fisher* v. *Oldham Corporation* [1930] 2 K.B. 364, it is clear that the police cannot be described as municipal servants, or that an "efficiency grant" is the only connection of the police with the Crown.

In that case it was held that the police appointed by the Watch Committee of a borough corporation, under the Municipal Corporations Act, 1882, if they unlawfully arrest and detain a person, do not act as the servants of the corporation or render it liable to an action for false imprisonment.

McCardie, J., referred to certain other statutes which affect the status of the police. Thus, under the Local Government Act, 1888, the State contributed towards the police force. By the Police Act, 1890, a system of pensions was introduced for police officers throughout the kingdom, with "central administrative control." The Police Act, 1919, created a police federation and empowered the Secretary of State to make regulations concerning the conditions of service of the members of all police forces. Under the Police (Appeals) Act, 1927, a member of a police force, dismissed or required to resign as an alternative, has a right of appeal to a Secretary of State. The Home Secretary is "the central police authority." Now, at common law, a constable was regarded as a servant of the King (*Mackalley's Case* (1611), Co. Rep., Pt. IX, 65*b*, 68*b*). "The general government administers law and justice, and keeps order; but it necessarily does it in different localities separately . . ." (*Coomber* v. *Justices of Berks* (1883), 9 A.C. 61, 67, *per* Lord Blackburn). "The administration of justice, including police powers, was treated as belonging to the Crown" (*Metropolitan Meat Industry Board* v. *Sheedy* [1927] A.C. 899, 904, *per* Viscount Haldane). The oath taken by a constable is not an oath to act as the servant of the corporation, but an oath "for preserving the peace by day and by night and preventing robberies and other felonies and misdemeanours and apprehending offenders against the peace," i.e., for preserving and enforcing the law.

"*Prima facie*, therefore, a police constable is not the servant of the borough. He is a servant of the State, a ministerial officer of the central power, though subject, in some respects, to local supervision and local regulation" (at p. 371 of [1930] 2 K.B.).

This principle has been followed by the Supreme Court in Australia, Canada, South Africa, and Massachusetts, respectively (authorities cited at p. 372, *ibid.*).

McCardie, J., concluded:—

"The police, in effecting that arrest and detention, were not acting as the servants or agents of the defendants. They were fulfilling their duties as public servants and officers of the Crown sworn to 'preserve the peace by day and by night, to prevent robberies and other felonies and misdemeanours and to apprehend offenders against the peace'" (at p. 377).

Hence, reports made by a police officer to his superior as to a street accident are privileged (at p. 636 of the *Cammell Laird* case; and see Roscoe, "Criminal Evidence," 1928, 15th ed., at pp. 180 *et seq.*, on the privilege of certain disclosures by informers to the police for the purpose of detecting and punishing offenders). See *Hastings* v. *Chalmers* (1890), 28 Sc. L.R. 207, where, in an action of damages against a sergeant for illegal arrest, the Lord President Inglis refused the production of reports to the procurator-fiscal relating to the arrest on the ground that the reports were "confidential communications by one officer in the public service to his superior officer in the same department." It was admitted that in this case no harm to the public service was to be apprehended from production.

Thus also, in *Muir* v. *Edinburgh, etc., Tramways Co., Ltd.* [1909] S.C. 244, where a passenger sued for damages for injuries received while alighting from a cable car, production was refused (1) of memoranda made by a constable on duty at the time of the accident, reports to superiors and entries in police books; (2) of communications between the defenders and the police concerning matters on the record before the date of action; (3) of reports by the driver or conductor (*a*) to the defenders, (*b*) the police before the date of action; (4) of statements taken from the driver or conductor by the police. In disallowing 3 (*a*), i.e., reports by the driver and conductor to the tramway company, the court followed *Stuart* v. *Great North of Scotland Railway Co.* (1896), 23 R. 1005. The lord justice-clerk observed: "There is no precedent whatever for allowing a call for police reports."

Of police reports, Viscount Simon, L.C., said, in the *Cammell Laird* case:—

"The practice in the metropolitan police district is, I believe, in the case of a street accident, where no criminal proceedings are being taken, to provide, on the application of persons interested in a possible civil claim, an abstract of any report that has been made by the policeman on the spot to his superiors, including the names of witnesses so far as known to the police. This seems an admirable way of reconciling the requirements of justice with the exigencies of the public service" (at p. 636 of [1942] A.C.).

The Lord Chancellor cites *Spigelman* v. *Hocker* (1933), 50 T.L.R. 87, apparently with approval, where production was sought of a statement made by one of the parties to the police three days after the accident. Yet Macnaghten, J., in that case, held that where the objection to production was based upon the fact that the particular document belonged to a particular class which should not be disclosed, the court will itself look at the document and will allow it to be used if satisfied that no public injury would result. This citation must have been *per incuriam*, for the decision does not coincide with the decision in the *Cammell Laird* case that the judge cannot look at the document and decide for himself. The lively debate between Macnaghten, J., Mr. Wilfrid Lewis (as he then was), who appeared for the Home Secretary, and the Attorney-General (Sir T. Inskip, K.C., as he then was) deserves to be read. It is reported at length and sets out very clearly the points discussed by Macnaghten, J., in argument, upon the freedom of admission of documents, as well as the reserved judgment. The Attorney-General handed in a letter stating that the Home Secretary had seen the document and that he was satisfied that the production of it would be contrary to the public interest; that letter, he said, was conclusive. *Macnaghten, J.*: "It is the statement signed by the defendant that is sought, not the police report." *The Attorney-General*: "That statement could not be produced under subpœna; it was a statement obtained on instructions and for police purposes. The Home Secretary was charged with the duty of saying whether such a document should be produced." *Macnaghten, J.*: "The Home Secretary is not charged with the administration of justice; Judges are."

In the course of his judgment (at pp. 89, 90) Macnaghten, J., said that it was a statement taken by a police officer from a man against whom a charge was contemplated. "There is scarcely a criminal trial that takes place for an indictable offence but a document of the class of which the present document is one is produced without objection." No claim had been made that a statement made by a prisoner to the police relating to the offence with which he was charged could be produced only with the consent of the Home Secretary. It was also claimed that the police officer could not be asked what the defendant said to him. If so, it would be wrong to ask the defendant what he said to the officer. The court was bound to take notice of the public interest, even though the parties themselves did not take the point. He followed the *dictum* of Scrutton, L.J., in *Ankin* v. *London & North Eastern Railway Co.* [1930] 1 K.B. 527: "It is the practice of the English courts to accept the statement of one of His Majesty's Ministers that production of a particular document would be against the public interest, even though the court may doubt whether any harm would be done by producing it." Macnaghten, J., said he could not interpret a particular document to include "class of document." The Home Secretary had written: "I am satisfied that the production of the particular document . . . as of other documents of the same class would be contrary to the public interest." It was held that the objection was not taken in the way the law required. The learned judge examined the document and then allowed it to be read. It was innocuous and merely a fuller statement of what had already been given in evidence.

This case must be regarded as overruled, for Viscount Simon, L.C., said in the *Cammel Laird* case that a document may be privileged because it belongs to "a class which, on grounds of public interest, must as a class be withheld from production" (at p. 636 of [1942] A.C.). And the judge—it is now definitely held—cannot look at the document for himself, in order to decide whether its production might be injurious to the public interest. If the judge did not think that the objection had properly been taken, he could request either a further affidavit or the Minister's personal attendance in court.

(*To be continued.*)

Notes.

Mr. J. A. Steers has accepted the invitation of the Minister of Town and Country Planning to act as adviser to the Ministry on scientific matters connected with the preservation of the coast line. Mr. J. A. Steers is Dean of St. Catharine's College, Cambridge, and University Lecturer in Geography.

A warm tribute to the work of the late Mr. Stanley Bond for the Church was paid by Earl Grey, Chairman of the Central Board of Finance of the Church of England, at a meeting of the Board held on Wednesday, 17th February, in the office of Queen Anne's Bounty. Lord Grey referred to Mr. Bond's tenure of office as Vice-Chairman of the Board, emphasising his wisdom and his readiness to answer any call for help, and their present sense of loss by his death. Those who had had to consult him most had come to rely increasingly on his judgment. After referring to Mr. Bond's outstanding services to law and medicine in promoting the compilation and publication of up-to-date digests covering these enormous fields, Lord Grey said that Mr. Bond had a far-sighted and original mind, and when he thought a thing was the right thing he had the courage to put all his resources into it. The Financial Commission of the Church Assembly (of which Mr. Bond was chairman) had suffered an irreparable loss.

A Conveyancer's Diary.

Personal Chattels.

A CORRESPONDENT has asked me to deal with the question set out below, which is one of those very elementary matters which causes a great deal of trouble. He takes the simple case of a testator who has, *inter alia*, a house and its contents: the testator leaves to his widow absolutely "all my personal chattels as defined by the Administration of Estates Act, 1925"; he then leaves the house to her for life, either directly or behind a trust for sale. The widow simply stays where she is after the testator's death; eventually she dies also, and the question is who can sell those of the contents of the house which are in some way attached to the structure without being manifestly mere parts of it, and what happens to the purchase-money.

This question resolves itself into the issue whether the objects in question are chattels or are part of the realty. If they are chattels they will have passed under the gift of personal chattels; for if they are chattels at all they come within the words "articles of household . . . use" in the definition section of the Administration of Estates Act. In that event the widow's personal representatives can sell, and the proceeds will be part of the estate. If they are not chattels they will pass with the house. If the house is settled on direct trusts which come to an end at the widow's death, the legal estate passes to her ordinary personal representatives under the rule in *Re Bridgett and Hayes' Contract* [1928] Ch. 163: they could sell, but would, of course, hold the proceeds on the trusts applicable under the testator's will. If there are direct trusts of the house, and the settlement does not come to an end on the widow's death, the legal estate passes to her special executors under A.E.A., s. 22: they can sell, and must hold the proceeds on the trusts of the testator's will. Finally, if the house is given on trust for sale, it is the trustees for sale who can sell, and they will then hold the proceeds on the trusts applicable thereto under the testator's will.

The main question is whether the objects in question are chattels. My correspondent asks specifically about the following sorts of thing: "A gas cooking or heating stove screwed on to a pipe from the main gas pipe; certain rods and rings; the brackets bearing the rods; roller blinds; the brackets into which blinds fit; loose shelves resting on wooden bearers nailed to the side of a recess next a chimney breast," and so on. The point in such case is that the objects are to some degree affixed to the building; the question is whether the affixation is of a degree or kind to bring into operation the maxim *quicquid plantatur solo, cedit solo*.

That maxim states only a very general rule. For example, as Sargant, J., remarked in *Vaudeville Electric Cinema, Ltd.* v. *Moriscl* [1923] 2 Ch. 74, at p. 84: "The anchor of a large ship must be very firmly fixed in the ground in order to bear the strain of the cable, but no one could suppose that it became part of the land, even though it should chance that the shipowner was also owner of the fee of the spot where the anchor was dropped." The true test appears to be that which was laid down by the Earl of Halsbury, L.C., in *Leigh* v. *Taylor* [1902] A.C. 157: "One principle has been established from the earliest period of the law down to the present time, namely, that if something has been made part of the house it must necessarily go to the heir, because the house goes to the heir and it is part of the house. That seems logical enough. Another principle appears to be equally clear, namely, that where it is something which, although it may be attached in some form or another . . . to the walls of the house yet having regard to the nature of the thing itself, and the purpose of its being placed there, is not intended to form part of the realty, but is only a mode of enjoyment of the thing while the person is temporarily there, and is there for the purpose of his or her enjoyment, then it is removable and goes to the executor" (at p. 158). Lord Halsbury went on to point out that there had been many, and seemingly divergent, decisions in the past in cases of this class, but that their differences were accounted for by changes in living habits and not by any changes in the principles. In the case before the House, it was held that a large frame, nailed to a wall, for the purpose of hanging and displaying a tapestry, was not part of the realty. It was obviously a temporary fixture for the purpose of enabling the tapestry to be displayed and enjoyed so long as it was there: it could be removed without damaging the structure of the house, and in this respect it differed fundamentally from a fresco, as Lord Brampton pointed out. The test which emerges is whether or not the affixation is of a character to indicate that the fixture is intended to be a permanent part of the building. This is a simple enough principle, but may not always be easy to apply to particular sets of facts. It was also laid down by Lord Halsbury (at p. 159) that this same test is equally applicable between heir and executor and between landlord and tenant.

In the *Vaudeville Cinema* case referred to above, Sargant, J., held that the cinema seats which belonged to the same person as owned the cinema and which had been fixed to the floor, were thus made part of the realty. He distinguished the facts from those of *Lyon & Co.* v. *London City & Midland Bank* [1903] 2 K.B. 135, where the objects in question were also seats in a place of entertainment and had been fixed to the floor, but where the seats were not the property of the owner of the freehold, but were in his possession under a hiring agreement containing an option to purchase which was never exercised. In such a case the possession of the seats, being temporary, negatived the idea that the affixation was meant to be permanent.

That case must be contrasted with *Reynolds* v. *Ashby* [1904] A.C. 466, where the mortgagee of a factory successfully claimed that certain machines fixed there were part of his security. The special features of this case were that the mortgagor acquired the machines on a "hire-purchase" agreement (viz., one under which he hired the machines and simultaneously was to buy them by instalments), and that he did so after the date of the mortgage, and in circumstances in which the vendor of the machines knew that they were going to be affixed and that there was a mortgage on the freehold (see *per* Lord Lindley at p. 475). In that case, therefore, the property in the affixed objects did merge in the fee.

These cases give some guide to the solution of the questions put by my correspondent. Taking first the curtain poles and rings and their brackets, I feel sure that the answer must be that all these objects must be treated together, since they all subserve a single end, and that the poles and rings cannot be separated from the brackets. Further, I do not feel any doubt that the whole of the curtain apparatus is a non-permanent fixture and is not intended to be made part of the house. On the contrary, it is designed to suit the taste of the person who uses particular curtains in a particular way; moreover, it can be removed by taking out a few screws and without any structural damage. The result is that on the widow's death her executors should sell these things and should apply the proceeds as part of her estate. In my view, precisely similar considerations apply to the roller blinds and their brackets. But I think that the case of the built-in shelves and their supports is different, even though the actual shelves only rest on the supports and are not screwed to them. Such shelves (and, even more so, built-in cupboards) have a permanent air. They fit a particular space and are useless except in a space of identical measurements. They are affixed by a great many screws and plugs and removal is a serious business: the position is not the same as with a curtain pole whose removal at most entails the abstraction of half a dozen screws. I think that the decisive element is that these built-in shelves are constructed to fit a particular space. I do not think that a set of shelves which run along part of a wall without being exactly fitted, and which are held to it by only a few screws, are in the same position.

The gas cooker seems to me to raise rather different considerations. First, it is only screwed to a gas-pipe and not to a wall. I understand that most gas companies have arrangements by statute or contract under which the pipes in a house continue to be their property and not part of the house. But assuming that the pipes are part of the house, the affixation of cooker to pipe is very slight, and I do not see how the cooker could cease to be a chattel. (A gas fitting fastened to the wall, such as an "Ascot" water heater, might be in a very different position as its removal would be a much more serious undertaking.) Finally, with all gas and electric apparatus, one has to inquire whether the object belonged to the testator at all; in very many cases these things are hired or "hire-purchased" from the supply company and, if so, no question arises.

The upshot is that one cannot lay down any rule of thumb for dealing with these partially affixed objects. One must try in each case to apply Lord Halsbury's test, which is, shortly, whether the affixation is intended to be permanent, one most material consideration being whether the object can be removed without seriously damaging the structure of the building.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Post-War Credits.

Sir,—A singularly inconvenient kind of asset, of present-day undetermined value, is passing in large numbers, but always in small amounts, into the hands of executors and trustees on winding up estates to which refunds are due on adjustment of tax reliefs, but which cannot be dealt with until a date, to be determined by the Treasury after the war, is fixed. As with the last war, the legal date of determination may be long after hostilities have actually ceased, and then a further period for recovery may elapse before the Treasury settles the maturity date. These credits not being negotiable instruments, executors will be compelled to keep estates open in respect of minute sums, divisible perhaps amongst many residuary legatees, some of whom, or the executors, may have died before the credits mature, which may also be overlooked or forgotten.

Cannot some special terms be agreed by the Inland Revenue for dealing with such cases as cash less, say, a percentage deduction, or in part payment of death duty?

Cambridge. W. L. RAYNES.
20th February.

COUNTY COURT CALENDAR FOR MARCH, 1943.

Circuit 1—Northumberland
His Hon. Judge Richardson
Alnwick,
Berwick-on-Tweed,
Blyth,
Consett, 26
Gateshead, 2
Hexham,
Morpeth, 4
†*Newcastle-upon-Tyne, (J.S.), 23 (B.) 10 (R.B.), 16, 22
North Shields, 25
Seaham Harbour, 15
South Shields, 17
Sunderland, 10, 11 (R.B.), 24

Circuit 2—Durham
His Hon. Judge Gamon
Barnard Castle, 11
Bishop Auckland, 23
Darlington, 10 (J.S.), 24
*Durham, 9 (J.S.), 22
Guisborough,
Leyburn, 15 (R.)
†*Middlesbrough, 4, 17 (J.S.)
Northallerton, 25
Richmond,
†*Stockton-on-Tees, 2 (J.S.), 16, 30 (J.S.)
Thirsk, 18 (R.)
West Hartlepool, 3, 31

Circuit 3—Cumberland
His Hon. Judge Allsebrook
Alston, 26
Appleby, 20 (R.)
†*Barrow-in-Furness, 10, 11
Brampton,
*Carlisle, 24
Cockermouth, 18
Haltwhistle,
*Kendal, 23
Keswick,
Kirkby Lonsdale, 9 (R.)
Millom, 16
Penrith, 25
Ulverston, 9
†*Whitehaven, 17
Wigton,
Windermere, 4 (R.)
*Workington,

Circuit 4—Lancashire
His Hon. Judge Peel, O.B.E., K.C.
Accrington, 18
†*Blackburn, 1, 3 (R.B.), 8, 15 (J.S.)
†*Blackpool, 3, 4 5 (R.B.), 10, 17 (J.S.)
Chorley, 11
*Clitheroe, 9 (R.)
Darwen, 19 (R.)
Lancaster, 5
†*Preston, 2, 9, 12 (R.B.), 16 (J.S.)

Circuit 5—Lancashire
His Hon. Judge Harrison
†*Bolton, 3, 9 (J.S.), 17
Bury, 1 (J.S.), 8
*Oldham, 4, 11, 18 (J.S.)
*Rochdale, 12 (J.S.), 19
*Salford, 2, 5, 10, 15, 16

Circuit 6—Lancashire
His Hon. Judge Crosthwaite
His Hon. Judge Procter
†*Liverpool, 1, 2, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 25, 26, 29, 30, 31
St. Helens, 10, 24
Southport, 2, 16
Widnes, 19
*Wigan, 4, 18

Circuit 7—Cheshire
His Hon. Judge Burgis
Altrincham, 3, 17 (J.S.), 31
*Birkenhead, 1, 2, 3 (R.), 17 (R.), 24 (J.S.), 30, 31 (R.)
Chester, 16
*Crewe, 5
Market Drayton, 19
Nantwich, 12, 26
*Northwich, 25
Runcorn, 23
*Warrington, 4, 18 (J.S.)

Circuit 8—Lancashire
His Hon. Judge Rhodes
Leigh, 12
†*Manchester, 1, 2, 3, 4, 8, 9, 10, 11, 12 (B.), 15, 16, 17, 18, 22, 23, 24, 25, 26 (B.), 29, 30, 31

Circuit 10—Lancashire
His Hon. Judge Raleigh Batt
*Ashton-under-Lyne, 12, 29 (B.)
*Burnley, 4, 5
Colne, 3
Congleton, 19
Hyde, 17
*Macclesfield, 9 (B.), 11
Nelson,
Rawtenstall, 10
Stalybridge, 18, 25 (J.S.)
*Stockport, 9, 23, 24 (J.S.), 26 (B.)
Todmorden, 2

Circuit 12—Yorkshire
His Hon. Judge Neal
*Bradford, 3 (R.B.), 9, 12 (J.S.), 24
Dewsbury, 25
*Halifax 18, 19 (J.S.)
*Huddersfield, 16, 17 (J.S.)
Keighley, 11
Otley, 10
Skipton, 8
Wakefield, 23

Circuit 13—Yorkshire
His Hon. Judge Essenhigh
*Barnsley, 10, 11, 12
Glossop, 17 (R.)
Pontefract, 15, 16, 17
Rotherham, 23, 24
*Sheffield, 2 (J.S.), 4, 5, 9 (J.S.), 12 (R.), 18, 19, 25, 26, 30 (J.S.)

Circuit 14—Yorkshire
His Hon. Judge Stewart
Easingwold,
Harrogate, 19 (R.), 26
Helmsley,
Leeds, 3 4 (J.S.), 10, 11 (J.S.), 17, 18 (J.S.), 24, 31
Ripon,
Tadcaster, 16
York, 9, 23

Circuit 16—Yorkshire
His Hon. Judge Griffith
Beverley, 11 (R.), 12
Bridlington, 8
Goole, 23
Great Driffield, 22
†*Kingston-upon-Hull 15 (R.), 16 (R.), 17, 18, 19 (J.S.), 22 (R.B.), 29 (R.)
New Malton, 24
Pocklington,
*Scarborough, 9, 10, 16 (R.B.)
Selby, 5
Thorne, 25
Whitby, 10 (R.), 11

Circuit 17—Lincolnshire
His Hon. Judge Langman
Barton-on-Humber, 5
†*Boston, 11 (R.), 18, 25 (R.B.)
Brigg, 1
Caistor, 24
Gainsborough, 19 (R.) 22
Grantham, 19
†*Great Grimsby, 2, 3 (J.S.), 4 (R.B.), 16, 17 (J.S.)
(R. every Wednesday)
Holbeach, 12 (R.)
Horncastle, 12
*Lincoln, 4 (R.), (R.B.) 8
*Louth, 23
Market Rasen, 9 (R.)
Scunthorpe, 8 (R.), 15
Skegness, 10
Sleaford, 9
Spalding, 11
Spilsby, 5 (R.)

Circuit 18—Nottinghamshire
His Hon. Judge Hildyard, K.C.
Doncaster, 3, 4, 5, 22
East Retford, 18 (R.)
Mansfield, 8, 9
Newark, 15, 26 (R.)
*Nottingham, 4 (R.B.), 10, 11 (J.S.), 12, 17, 18, 19 (B.)
Worksop, 9 (R.), 16

Circuit 19—Derbyshire
His Hon. Judge Willes
Alfreton, 16
Ashbourne,
Bakewell, 9
Burton-on-Trent, 17 (R.B.)
Buxton, 15
*Chesterfield, 12, 19
*Derby, 10, 23 (R.B.), 24, 25 (J.S.)
Ilkeston, 23
Long Eaton, 18
Matlock,
New Mills,
Wirksworth, 11

Circuit 20—Leicestershire
His Hon. Judge Galbraith, K.C.
Ashby-de-la-Zouch, 18
*Bedford, 16 (R.B.), 24
Bourne,
Hinckley, 17
Kettering, 23
*Leicester, 8, 9, 10 (J.S.), (B.), 11 (B.), 12 (B.)
Loughborough, 16
Market Harborough, 15
Melton Mowbray, 5 (R.), 26
Oakham, 19
Stamford, 22
Wellingborough, 25

Circuit 21—Warwickshire
His Hon. Judge Dale
His Hon. Judge Finnemore (Add.)
*Birmingham, 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16 (B.), 17, 18, 19, 22, 23, 24, 25, 26, 29, 30

Circuit 22—Herefordshire
His Hon. Judge Roope Reeve, K.C.
Bromsgrove, 26
Bromyard,
Evesham, 24
Great Malvern, 8
Hay, 10
*Hereford, 16, 25
*Kidderminster, 9, 23
Kington, 17
Ledbury,
*Leominster, 15
*Stourbridge, 11, 12
Tenbury,
*Worcester, 18, 19

Circuit 23 — Northamptonshire
His Hon. Judge Forbes
Atherston, 18
Banbury, 19
Bletchley, 23
Chipping Norton, 17
*Coventry, 1, 2 (R.B.), 15
Daventry, 10
Leighton Buzzard,
*Northampton, 2 (R.), 5 (R.B.), 8, 9
Nuneaton, 3
Rugby, 4 (R.), 11
Shipston-on-Stour, 22

Circuit 24 — Monmouthshire
His Hon. Judge Thomas
Abergavenny,
Abertillery, 9
Bargoed, 10
Barry, 4
†*Cardiff, 1, 2, 3, 5, 6
Chepstow,
Monmouth, 16
†*Newport, 18, 19
Pontypool and Blaenavon, 17, 26
*Tredegar, 11

Circuit 25—Staffordshire
His Hon. Judge Caporn
*Dudley, 2, 9 (J.S.), 16
*Walsall, 4, 11 (J.S.), 18, 25 (J.S.)
*West Bromwich, 3, 10 (J.S.), 17, 24 (J.S.)
*Wolverhampton, 5, 12 (J.S.), 19, 26 (J.S.)

Circuit 26—Staffordshire
His Hon. Judge Finnemore
Burslem,
*Hanley, 11, 25, 26
Leek, 15
Lichfield, 3
Newcastle-under-Lyme, 16
*Stafford, 12
*Stoke-on-Trent, 10
Stone, 29
Tamworth, 4
Uttoxeter, 19

Circuit 27—Middlesex
His Hon. Judge Tudor Rees
Whitechapel *(Sitting at Shoreditch County Court)*,
(List not received.)

Circuit 28-Shropshire
His Hon. Judge Samuel, K.C.
Brecon, 12
Bridgnorth, 10
Builth Wells, 4
Craven Arms, 2
Knighton, 3
Llandrindod Wells, 5
Llanfyllin,
Llanidloes,
Ludlow, 8
Machynlleth,
Madeley, 11
*Newtown,
Oswestry, 9
Presteign,
*Shrewsbury, 15, 18
Wellington, 16
Welshpool,
Whitchurch, 17

Circuit 29—Caernarvonshire
His Hon. Judge Evans, K.C.
Bala,
†*Bangor, 22
Blaenau Festiniog, 16
*Caernarvon, 24
Colwyn Bay, 11
Conway,
Corwen,
Denbigh,
Dolgelly,
Flint,
Holyhead, 23
Holywell, 8
Llandudno,
Llangefni,
Llanrwst, 19 (R.)
Menai Bridge,
Mold, 12
*Portmadoc, 15
Pwllheli, 19
Rhyl, 10
*Ruthin, 25
Wrexham, 11 (R.), 17, 18

Circuit 30 — Glamorganshire
His Hon. Judge Williams, K.C.
*Aberdare, 2, 30
Bridgend, 22 (R.), 23, 24, 25, 26
Caerphilly, 18 (R.)
Merthyr Tydfil, 4, 5
*Mountain Ash, 3, 31
Neath, 16, 17, 18
*Pontypridd, 9, 10, 11, 12
Port Talbot, 19
*Porth, 8
*Ystradyfodwg,

Circuit 31—Carmarthenshire
His Hon. Judge Morris, K.C.
Aberayron,
†*Aberystwyth, 19
Ammanford, 3
Cardigan,
†*Carmarthen, 2
†*Haverfordwest, 16
Lampeter,
Llandilo,
Llandovery,
Llanelly, 23, 25
Narberth, 15
Newcastle-in-Emlyn,
Pembroke Dock,
*Swansea, 8, 10, 11, 12, 13

Circuit 32—Norfolk
His Hon. Judge Rowlands
Beccles, 22
Bungay, 1
Diss, 2
Downham Market, 4
East Dereham, 24
Eye, 23
Fakenham,
†*Great Yarmouth, 18, 19
Harleston,
Holt,
†*King's Lynn 11, 12
†Lowestoft, 5
North Walsham,
*Norwich, 15, 16, 17
Swaffham, 3
Thetford, 9
Wymondham, 10

Circuit 33—Essex
His Hon. Judge Hildesley, K.C.
Braintree, 5
*Bury St. Edmunds, 2
*Chelmsford, 8
Clacton, 23
Colchester, 3, 4
Felixstowe,
Halesworth, 16
Halstead, 19
Harwich,
†*Ipswich, 10, 11, 12
Maldon, 18
Saxmundham,
Stowmarket, 26
Sudbury, 24
Woodbridge, 17

Circuit 34—Middlesex
His Hon. Judge Austin Jones
His Hon. Judge Tudor Rees (Add.)
Uxbridge, 9, 16, 23

Circuit 35 — Cambridgeshire
His Hon. Judge Campbell
Biggleswade, 2
Bishops Stortford,
*Cambridge, 5 (R.B.), 10 (R.), 17 (J.S.), (B.), 18
Ely, 19
Hitchin, 8
*Huntingdon, 11
Luton, 4 (J.S.), (B.), 5, 19 (R.B.)
March,
Newmarket, 15
*Oundle,
Peterborough, 5 (R.), 9, 10
Royston, 12
Saffron Walden, 1
Thrapston, 3
Wisbech, 5 (R.), 16

Circuit 36—Berkshire
His Hon. Judge Hurst
*Aylesbury, 5, 19 (R.B.)
Buckingham, 16
Henley-on-Thames, 26
High Wycombe,
Oxford, 4, 15, 22 (R.B.
Reading, 4 (R.B.), 17, 18, 19
Thame,
Wallingford, 29
Wantage, 2
*Windsor, 9, 10, 23, 24
Witney, 3

Circuit 37—Middlesex
His Hon. Judge Hargreaves
Chesham, 2
*St. Albans, 16
West London, 1, 3, 5, 8, 10, 12, 15, 17, 19, 22, 24, 26, 29, 31

Circuit 38—Middlesex
His Hon. Judge Alchin
Barnet, 2, 9 23
*Edmonton, 4, 5, 11, 12, 18, 19, 25, 26, 30
Hertford, 3
Watford, 10, 17, 24, 31

Circuit 39—Middlesex
His Hon. Judge Engelbach
Shoreditch, 1, 2, 4, 5, 8, 9, 11, 12, 15, 16, 18, 19, 22, 23, 25, 26, 29, 30

Circuit 40—Middlesex
His Hon. Judge Jardine, K.C.
His Hon. Judge Drucquer (Add.)
His Hon. Judge Tudor Rees (Add.)
Bow
(List not received.)

Circuit 41—Middlesex
His Hon. Judge Earengey, K.C.
His Hon. Judge Trevor Hunter, K.C. (Add.)
Clerkenwell, 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30, 31

Circuit 42—Middlesex
His Hon. Judge David Davies, K.C.
Bloomsbury, 1, 2, 3, 4, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30, 31

Circuit 43—Middlesex
His Hon. Judge Lilley
His Hon. Judge Drucquer (Add.)
Marylebone, 2, 3, 4, 5, 9, 10, 11, 12, 16, 17, 18, 19, 23, 24, 25, 26, 30, 31.

Circuit 44—Middlesex
His Hon. Judge Sir Mordaunt Snagge
His Hon. Judge Austin Jones (Add.)
Westminster, 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30, 31

Circuit 45—Surrey
His Hon. Judge Hancock, M.C.
His Hon. Judge Hurst (Add.)
*Kingston, 2, 5, 9, 12, 16, 19, 23, 26, 30
*Wandsworth, 1, 3, 4, 8, 10, 11, 15, 17, 18, 22, 24, 25, 29, 31

Circuit 46—Middlesex
His Hon. Judge Drucquer
Brentford, 1, 4, 8, 11, 15, 18, 22, 25, 29
*Willesden, 2, 3, 5, 9, 10, 12, 16, 17, 19, 23, 24, 26, 30, 31

Circuit 47—Kent
His Hon. Judge Wells
His Hon. Judge Hurst (Add.)
Southwark, 1, 2, 3, 4, 5, 8, 9, 11, 12, 15, 16, 17, 18, 19, 22, 23, 25, 26, 29, 30, 31
Woolwich, 10, 24

Circuit 48—Surrey
His Hon. Judge Konstam, C.B.E., K.C.
Dorking, 11
Epsom, 3, 10, 24, 31
*Guildford, 4, 18, 25
Horsham, 16
Lambeth, 1, 2, 5, 8, 9, 12, 15, 19, 22, 23, 26, 29, 30
Redhill, 17

Circuit 49—Kent
His Hon. Judge Clements
Ashford, 1
*Canterbury, 9
Cranbrook,
Deal, 12
*Dover,
Faversham, 8
Folkestone, 2
Hythe,
*Maidstone, 5
Margate, 4
*Ramsgate,
†*Rochester, 10, 11
Sheerness,
Sittingbourne, 16
Tenterden, 15

Circuit 50—Sussex
His Hon. Judge Austin Jones
His Hon. Judge Archer, K.C. (Add.)
Arundel,
Brighton, 4, 5, 18, 19, 25
†*Chichester, 12
*Eastbourne, 17
*Hastings, 9
Haywards Heath, 31
*Lewes, 1
Petworth, 29
Worthing, 23

Circuit 51 — Hampshire
His Hon. Judge Topham, K.C.
Aldershot,
Basingstoke, 10
Bishops Waltham,
Farnham, 12, 13
*Newport,
Petersfield, 19
†*Portsmouth, 1 (B.), 4, 11, 18, 25
Romsey,
Ryde, 31
†*Southampton, 2, 9, 10 (B.), 16, 23
*Winchester, 17

Circuit 52—Wiltshire
His Hon. Judge Jenkins, K.C.
*Bath, 11 (B.), 18 (B.)
Calne,
Chippenham, 23
Devizes, 15
*Frome, 16 (B.)
Hungerford, 8
Malmesbury, 25
Marlborough,
Melksham, 19
*Newbury, 17 (R.)
*Swindon, 10, 17 (B.)
Trowbridge, 12
Warminster,
Wincanton, 19 (R.)

Circuit 53—Gloucestershire
His Hon. Judge

Alcester, 17
*Cheltenham, 9, 23
Cirencester, 18
Dursley, 4
†*Gloucester, 8, 22
Newent, 12
Newnham, 3
Northleach, 11
Redditch, 19
Ross, 5
Stow-on-the-Wold, 24
Stratford-on-Avon, 25
Stroud, 2
Tewkesbury, 15
Thornbury, 1
Warwick, 26

Circuit 54—Somersetshire
His Hon. Judge Wethered
†*Bridgwater, 12
†*Bristol, 1 (J.S.), 2, 3, 4, 5 (B.), 15, 16, 17, 18, 22 (B.), 23, 24, 25, 26 (B.)
Minehead, 16 (R.)
*Wells, 9
Weston-super-Mare, 10, 11

Circuit 55 — Dorsetshire
His Hon. Judge Cave, K.C.
Andover, 10 (R.)
Blandford,
*Bournemouth, 12 (J.S.), 15, 16, 25 (R.)
Bridport, 23 (R.)
Crewkerne, 9 (R.)
*Dorchester, 5
Lymington,
†Poole, 3, 17 (R.)
Ringwood,
*Salisbury, 4
Shaftesbury, 1
Swanage,
*Weymouth, 2
Wimborne,
*Yeovil, 11

Circuit 56—Kent
His Hon. Judge Sir Gerald Hurst, K.C.
Bromley, 9, 10, 17, 30
*Croydon, 1, 2, 3, 9 (R.), 16 (R.), 18 (R.B.), 22, 23, 24
Dartford, 4, 18
East Grinstead, 16
Gravesend, 15
Sevenoaks, 8
Tonbridge, 25
Tunbridge Wells, 11

Circuit 57-Devonshire
His Hon. Judge Thesiger
Axminster, 15 (R.)
†*Barnstaple, 23
Bideford, 24
Chard, 18 (R.)
†Exeter, 11, 12
Honiton, 15
Langport, 22
Newton Abbot, 18
Okehampton, 19
South Molton,
Taunton, 8
Tiverton, 17
*Torquay, 9, 10
Torrington, 25
Totnes,
Wellington, 15 (R.)

Circuit 58—Essex
His Hon. Judge Trevor Hunter, K.C.
Brentwood, 19 (R.)
Gray's Thurrock, 9 (R.)
Ilford, 1 (R.), 2, 8 (R.), 15 (R.), 16, 22 (R.) 23, 29 (R.), 30
Southend, 3 (R.), 10, 11 (R.), 12, 17 (R.B.)

Circuit 59—Cornwall
His Hon. Judge Armstrong
Bodmin,
Camelford,
Falmouth, 15 (R.)
Helston, 2
Holsworthy, 12
Kingsbridge, 26 (R.)
Launceston, 11
Liskeard, 10
Newquay,
*†Penzance, 4
Plymouth, 12 (R.), 16, 17, 18
Redruth, 3
St. Austell, 9
Tavistock, 19
†*Truro, 5

The Mayor's & City of London Court
His Hon. Judge Dodson
His Hon. Judge Beazley
His Hon. Judge Thomas
His Hon. Judge McClure
Guildhall, 1, 2, 3 (A.), 4, 5 (J.S.), 8, 9, 10 (A.), 11, 12 (J.S.), 15, 16, 17 (A.), 18, 19 (J.S.), 22, 23, 24, 25, 26 (J.S.), 29, 30, 31 (A.)

* = Bankruptcy Court
† = Admiralty Court
(R.) = Registrar
(J.S.) = Judgment Summonses
(B.) = Bankruptcy
(R.B.) = Registrar in Bankruptcy
(Add.) = Additional Judge
(A.) = *Admiralty

Landlord and Tenant Notebook.

Conversion into Flats.—

(1) Apart from Statute.

On 10th March, 1919, the late Avory, J., tried a case, *Day* v. *Waldron* (1919), 35 T.L.R. 310, in which landlords sought to restrain their tenant from converting a house into flats. And if in the course of the hearing the learned judge patiently listened to a great deal of evidence which he afterwards described as irrelevant, the decision is none the less likely to prove a useful guide in conditions now obtaining and likely soon to obtain. The shortage of flats contrasted with the emptiness of many large dwelling-houses is frequently commented upon in the Press; for a judicial description of the type of large house in question, one can refer to *Portman* v. *Latta* [1942] W.N. 97: "unlettable as a private residence, but it would not be in accordance with good estate management to pull it down. It would have to be put to some other use."

The defendant in *Day* v. *Waldron* held a house on a London estate which consisted of houses "mainly of good residential class, of an average rateable value of £148 a year." In her lease she covenanted not to make any alteration in its arrangement or appearance without the plaintiffs' consent; not to use the premises for the purpose of any business, but to inhabit them as a private dwelling-house or professional residence or for a private school only; not to do anything which might be a nuisance or injury to the plaintiffs or to tenants of neighbouring houses.

The plaintiffs sought possession, by virtue of a forfeiture clause, when the defendant converted the house into three self-contained flats plus one self-contained maisonnette. This operation involved the erection of sundry partitions and screens and the installation of sinks and the like; also, the area door was partly bricked up. The parts were separately let, and the plaintiffs claimed that all three covenants mentioned above had been broken.

The irrelevant matter referred to above is worth mentioning for the purpose of guidance. Witnesses—expert, and a neighbour—admitted that some other houses on the estate had been converted into flats, but said that these were larger, and that restrictions—e.g., as to resident caretakers or porters—had been imposed. The defendant called witnesses who deposed to increased value by reason of the conversion, to the respectability of his tenants, and the desirability at the then present time of turning houses into flats in order to prevent their being unoccupied. A witness who occupied one of the flats said he had moved there from a house elsewhere in London because he could not get servants. And some of the cross-examination appears to have been designed to elicit whether professional people did without servants from choice or because they could not get them.

More to the point was fear expressed by the plaintiffs that if they did not take action against the defendant other tenants would proceed against them. They also adduced evidence of the fear that the premises would fall into bad hands and be occupied by undesirable tenants, and of the increased risk of fire to neighbouring property.

As regards the construction of the covenants, the defence unsuccessfully contended that as long as the external appearance of the house remained the same, the first covenant was not infringed. It does not sound a very strong point. One would have thought that, on the face of it, "arrangement or appearance" was designed to cover everything. With regard to the covenant to inhabit and use the house as a private dwelling-house, the argument was advanced that this did not mean that it should not be occupied as several residences, but merely that no business should be carried on on the premises. This contention was likewise rejected, the learned judge referring to *Rogers* v. *Hosegood* [1900] 2 Ch. 388 (C.A.), in which it was held that the erection of a block of flats would infringe a covenant that not more than one messuage should at any one time be erected or standing on the plot, and that such messuage should be adapted for and used as and for *a* private residence only.

These interpretations of the first two covenants virtually decided the issues on those covenants; dealing with the one against nuisance and injury, his lordship, while not agreeing that there was any reasonable fear that the flats might be used for immoral purposes, held that the effect of the conversion was to depreciate the letting and selling values of other houses.

Before considering the position apart from covenants and the possibility of relief from covenants, it may be useful to recall one or two authorities in which points raised in *Day* v. *Waldron* have been further investigated.

Whether a tenant breaks a covenant against carrying on business by sub-letting was touched upon or gone into in *Berton* v. *Alliance Economic Investment Co.* [1922] 1 K.B. 742 (C.A.), a case in which the actual issues were whether lessees had permitted pemises to be used otherwise than as a dwelling-house and suffered anything to be done which might in the lessors' judgment be or grow to their injury or annoyance or that of their tenants or of any occupiers of contiguous or adjoining premises. A sub-lessee, whose underlease repeated the covenants, had let the premises in separate tenements to weekly tenants. In the then state of Rent Act legislation, it was held that the lessee had not permitted or suffered what was complained of. Argument was limited to the meanings of "permit" and "suffer," but in one of the judgments it was mentioned that there was no dispute whether the two covenants, to use as private dwelling-house only and not to do what was in the judgment of the lessors was an annoyance, had been broken; and in an unreported case, *Berton* v. *London and Counties House Property Co.*, the Court of Appeal had decided (on 17th November, 1920) that letting in tenements constituted a breach of the first-named covenant.

In *Thorn* v. *Madden* it was held that a lady who had taken a sub-lease of a house "beyond her means" both used the premises for the purpose of business and used it otherwise than as a private dwelling-house by receiving "paying guests."

Turning now to the question whether a tenant can be restrained from converting a house into flats apart from any covenant: two tenant's obligations common to most tenancies may have this effect, the obligation not to commit waste and the obligation not to alter the nature of the thing demised. That these may overlap is obvious, but it will be convenient to consider them separately.

In the case of waste, there is a very old authority, *Hayes* v. *Allen* (1592), Cro. Eliz. 234, in, or in the course of which, it was laid down that pulling down a demised house and erecting a new one in its place were both waste. In *Smyth* v. *Carter* (1853), 18 Beav. 78, a tenant was restrained from pulling down a house with a view to replacing it by another. But it is not altogether easy to reconcile these decisions with sundry authorities in which ameliorative waste was countenanced, e.g., *Doherty* v. *Allman* (1878), 3 A.C. 709 (long lease; store buildings converted into dwelling-houses, value thereby increased) and *Meux* v. *Cobley* [1892] 2 Ch. 253 (farm into market garden, more profitable mode of cultivation) and I think a landlord would be likely to rely more strongly on alleged breach of the implied obligation to yield up property of the same character as that demised to him (which is part of, or springs from, the duty to use in a tenant-like manner). This obligation was studied with some care in *Marsden* v. *Edward Heyes, Ltd.* [1927] 2 K.B. 1 (C.A.), in which the defendants, tenants to the plaintiff of a dwelling-house and shop, were found to have converted the building into one large shop; nothing was left of the original except the four walls. They alleged that the letting value was enhanced, and contended that in the absence of express covenant they had not broken any obligation. Disillusioning them, Bankes, L.J., after examining older authorities, said, "the law recognises a contractual obligation . . . in reference to the user to which the premises were to be put." The tenant must "deliver up premises of the same character as those which were demised to him." And *Rogers* v. *Hosegood* and *Day* v. *Waldron*, *supra*, would show that a dwelling-house converted into flats would not be premises of the same character.

Points in Practice.

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29–31, Breams Buildings, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Notice of Disclaimer.

Q. Surely there is a mistake in your reply to the above question under "Points in Practice" in your issue of the 6th February? Is it not incorrect to say that rent is still payable until the War Damage Commission have finally decided whether to make a value payment or a costs of work payment? I think you have overlooked para. (*b*) of subs. (1) of s. 10 of the 1939 Act, which makes it quite clear that subject to the powers of the court under the following provisions of that subsection no rent is payable from the date of service of a notice of retention (ordinary notice of retention) until the date on which the land is rendered fit. Subsection (8) of s. 2 of the 1941 Act applies the provisions of the principal Act relating to a notice of retention to a conditional notice of retention (subject to the obligations of the tenant under subs. (4) of s. 2 of the 1941 Act).

A. We are obliged for this correction and regret that the point had escaped our contributor's notice.—Ed., *Sol. J.*

Parliamentary News.

HOUSE OF LORDS.

House of Commons Disqualification (Temporary Provisions) Bill [H.C.].
Read Second Time. [23rd February.

Police Appeals Bill [H.C.].

Universities and Colleges (Trusts) Bill [H.C.].
Reported without Amendment. [23rd February

Mr. William Joseph Stuart, solicitor, of Bridlington, left, so far as can at present be ascertained, £31,288, with net personalty £30,352

To-day and Yesterday.

LEGAL CALENDAR.

February 22.—Lord O'Hagen resigned the office of Lord Chancellor of Ireland on the 22nd February, 1874, after holding it for five years. Before his appointment he had been a judge of the Irish Common Pleas and his practice at the bar had been in the common law courts. Nevertheless, he discharged his duties in Chancery in a satisfactory manner and his courtesy and impartiality were above reproach. During the next six years he sat regularly in the House of Lords on the hearing of appeals. In May, 1880, he resumed the Chancellorship for a period of eighteen months. He died in 1885. His manners were genial and conciliatory and everyone regarded him with esteem and goodwill.

February 23.—When the great Judicature Act abolished the last privilege of the serjeants-at-law, the requirement that all the common law judges should be of their order, they determined to dissolve their society and sell Serjeants' Inn, its ancient home in Chancery Lane, thus destroying a legal association that went back to the fifteenth century. Accordingly, the premises were sold by auction on the 23rd February, 1877, and the proceeds, £57,100, divided among the members. The purchaser was Serjeant Cox, who took the stained glass windows of the hall to his home at Mill Hill. The portraits were presented to the National Portrait Gallery. In 1910 an insurance company demolished the buildings to make way for an office block which contributes nothing to the architectural character of the neighbourhood.

February 24.—When Trinidad was taken by the British in 1797, Lieutenant-Colonel Picton was appointed Governor. During the period of his authority Spanish colonial law continued to be effective in the island, and, under the impression that this authorised torture, he allowed Louisa Calderon, a young girl suspected of complicity in a robbery, to be put to the question, being suspended by her arm from the ceiling while her foot rested on a sharp wooden spike. On his return to England he was tried before Lord Ellenborough for so doing. Louisa, a slender and graceful creole, dressed in white and wearing a turban of white muslin, gave evidence in Spanish and presented a "very genteel appearance." The jury found, on the 24th February, 1806, that the law of the island did not authorise torture and a verdict of guilty was returned. Subsequently, however, a new trial was obtained, and in 1808 a special verdict was returned. The case dragged on and had not reached a final conclusion when Picton was killed at Waterloo.

February 25.—Horatio Bottomley's financial and journalistic adventures often brought him before the courts. In an early case he was prosecuted for irregularities in connection with a joint stock trust and a goldmining company. The hearing at the London Guildhall lasted for nearly three months, and then on the 25th February, 1909, Alderman Sir George Smallman was compelled by illness to retire, after a hearing of twenty-three days. This started a discussion whether the alderman who took his place had to hear all the evidence afresh and the question went to the Divisional Court. Sir Horatio Davies, who now heard the case, soon fell ill in his turn and was replaced by Sir James Ritchie, who finally dismissed the summons.

February 26.—On the 26th February, 1780, the Old Bailey Sessions ended and seven men were condemned to death: William Herbert for returning from transportation, Christian Burrows and John Burden for robbing Sarah Gifford in the Green Park, Robert Andres and Richard Palmer for robbing the house of Sir Richard Lumm, Christopher Plumley also for robbing a house, and John Pears for selling a horse which he had hired.

February 27.—On the 27th February, 1899, Sir Robert Romer was promoted from the Chancery Division to the Court of Appeal where he sat till his retirement in 1906. Lord Halsbury's choice of judges was not always approved by the profession, but there was never any doubt about the wisdom of this appointment. His mind was active and acute; he had a distinguished career at the bar behind him, and yet he was no mere lawyer. His eminence as a mathematician caused him to be elected a Fellow of the Royal Society and for his recreations he delighted in the pleasures of a country life, particularly shooting. His universal popularity expressed itself in the circumstance that everyone spoke of him as "Bob" Romer. To those who knew him as a Fellow of Trinity College, Cambridge, his success at the bar seemed a matter of course. He was one of the three senior wranglers destined to judicial office whom the University produced in the 'sixties. The others were Sir James Stirling and Lord Moulton.

February 28.—Lord Simon once said: "My father was Welsh, my mother English, my wife Irish, and I went to school in Scotland," and he added: "Wherever I go I generally find that some portion of that ancestry stands me in good stead." He was born on the 28th February, 1873. Through the courage and imagination of his father, the Rev. Edwin Simon, a Congregationalist minister, he won a scholarship at Fettes College, Edinburgh. Another scholarship at Wadham carried him to Oxford, where his University career gave promise of his future. In youth and manhood he owed much to the strong and unfailing influence of a remarkable mother. Just after her death in 1936, he wrote of "the flawless impression of fulness of life and sweetness of spirit that she spread around her." Their relationship was one of rare charm. She lived to see her son Solicitor-General, Attorney-General, Home Secretary and Foreign Secretary.

Unusual Oaths.

The court at Croydon recently witnessed the unusual spectacle of an Englishman with upraised arm taking the oath in the following form: "I swear, as in the presence of Buddha, that I am unprejudiced, and if what I speak prove false, or if by my colouring truth others shall be led astray, then may the three holy existencies together with the devotees of the twenty-two firmaments, punish me and also my migrating soul." A Hindu, I believe, must swear facing the Ganges and this once created some difficulty at Brighton Police Court. It was at Brighton that, for the benefit of a Mohammedan witness, they produced from the public library the Koran found in the private apartments of the King of Delhi when the city was taken in 1857. About a year ago an extremely unusual oath was taken at Clerkenwell County Court when a man claiming to be King of Poland swore by Apollo to give true evidence. All these oaths have less dramatic emphasis than the Chinese form requiring the breaking of a saucer with the addition of the words: "The saucer is cracked. If I do not tell the truth my soul will be cracked like the saucer." Avory, J., once tried a case at Liverpool arising out of a feud between two Chinese gangs. So many witnesses went into the box that by the time the last one appeared he was ankle deep in crockery. It was at Liverpool County Court that a witness was provided with a saucer so solid that it rebounded intact when thrown down. After three attempts it was broken by being hammered on the floor.

Review.

Preston and Newsom's Limitation of Actions. Second Edition, by G. H. Newsom, of Lincoln's Inn, Barrister-at-Law. 1943. Demy 8vo. pp. 318 and (with Index) xlviii. London: The Solicitors' Law Stationery Society, Ltd. £2 net.

The second edition has followed rapidly upon the first, which soon established itself as an authoritative work on an intricate subject. Under the stress of war, many claims tend to become stale, and the question whether they are statute-barred will become increasingly important. The learned author records that his original collaborator and friend, Mr. C. H. S. Preston, was killed during the last hours of the retreat from Dunkirk. This edition is dedicated to his memory. The Preface contains a valuable note of four pages on the effect of war on the Limitation Act, 1939, which repealed and superseded numerous statutes from the Limitation Act, 1623, onwards. Besides being a consolidating Act, however, the Act of 1939 made a number of substantive alterations. Recent decisions show that the law is still in a state of flux with regard to the application of the Act to public authorities, and also with regard to the vexed question of estoppel as a bar to pleading the statute. The learned author deals with the many problems arising with ripe learning and in a lucid style. The decision in the *Bowring-Hanbury* case [1942] Ch. 276, was upheld by the Court of Appeal after the text was printed, but (as stated in the Preface) the judgment does not render it necessary to alter what is stated in the body of the work. The book is produced in conformity with the authorised economy standards, but there is no deterioration in the quality of the paper, printing or binding. The usefulness of the volume is enhanced by an ample Index.

Obituary.

Mr. S. S. Bond.

Mr. Stanley Shaw Bond, the Chairman of Coke Press, Ltd., and the Chairman and Governing Director of the Butterworth group of companies, died on Sunday, 14th February. In addition to his business interests he was Hon. Treasurer of the Royal Association in Aid of the Deaf and Dumb, Governor of Queen Alexandra's Hospital Home for Soldiers, Chairman of the Financial Commission of the Church Assembly, and Vice-Chairman of the Central Board of Finance of the Church of England.

Mr. T. G. Cowan.

Mr. Thomas Galloway Cowan, formerly senior partner in Messrs. Slaughter & May, solicitors, of Austin Friars, E.C.2, died recently aged seventy-seven. Mr. Cowan was admitted in 1887 and retired from practice in 1935. He was a director of the Solicitors' Benevolent Association and was chairman for 1941–42.

Mr. J. J. Dallas.

Mr. John James Dallas, retired solicitor, of Preston, died on Wednesday, 10th February, aged eighty-two. He was admitted in 1884, and for a number of years was secretary to the Preston Law Society.

Notes of Cases.

HOUSE OF LORDS.

Tilley *v.* Wales (Inspector of Taxes).

Lord Simon, L.C., Lord Atkin, Lord Thankerton, Lord Russell of Killowen and Lord Porter. 11th February, 1943.

Revenue—Income tax—Payment of lump sum to director in consideration of reduction of salary and also release of pension rights—Liability to tax—Income Tax Act, 1918 (8 & 9 *Geo.* 5, *c.* 40), *Sched. E, r.* 1.

Appeal from a decision of the Court of Appeal, affirming a decision of Lawrence, J.

By an agreement of the 28th June, 1937, made between H., Ltd., and the appellant, it was agreed, in consideration of the cancellation of an earlier agreement, that the appellant's salary as managing director of H., Ltd., should be increased to £6,000 a year and that, in the event of him ceasing to be managing director of the company, the company would pay to him £4,000 a year for ten years. By an agreement of the 6th April, 1938, after reciting that the company had requested the appellant: (1) to release it from the prospective obligation to pay the pension, and (2) to serve the company in future at a salary of £2,000, the appellant agreed to these requests in consideration of the payment to him by the company of £40,000 payable by two equal instalments. The £40,000 was accordingly payable in part as the price of compounding the pension, and in part in consideration of the reduction of the appellant's salary from £6,000 to £2,000. The Crown claimed that the sum of £40,000 was chargeable to income tax under Sched. E of the Income Tax Act, 1918, it being paid to him in respect of his office of director and coming within r. 1. The Court of Appeal decided in favour of the Crown.

Viscount Simon, L.C., said that, if it was legitimate to separate the consideration, it appeared that there were two decisions of the House of Lords which should guide them, one was in connection with the pension problem and the other in connection with the reduction of salary. Neither the pension nor the sum paid to commute it constituted a profit from the office of director assessable under Sched. E. If the pension was paid, after the appellant ceased to hold the office, it would be assessable under the head of pension in Sched. E. A pension was a taxable subject-matter distinct from the profit of an office, and if an individual agreed to exchange his right to a pension for a lump sum that sum was not taxable under Sched. E. That conclusion was in accordance with the views of a majority of the House of Lords in *Hunter* v. *Dewhurst*, 16 Tax Cas. 605. But could the same view be taken of an arrangement made by an employer and his servant under which, instead of the whole or part of a periodic salary, a single amount was paid and received in respect of the employment? He did not think that such a payment could escape the quality of income, which was necessary to attract income tax, because an arrangement had been made to reduce for the future the annual payments while paying a large sum down to represent the difference. *Prendergast* v. *Cameron* [1940] A.C. 549, supports this view. There remained the question whether, when capitalisation of a pension was not taxable, and a sum paid in compromise of a reduction of salary was taxable, the £40,000 which was agreed between the parties to be the value of the two things together could be split up. They were relieved from dealing with this point, as the Attorney-General had agreed that the sum should be treated as apportionable. The balance of the sum, which was to be regarded as representing the purchase price of the annuity, would escape taxation.

The other noble and learned lords concurred.

Counsel: *Needham*, K.C., and *Donovan*; *The Attorney-General* (Sir Donald Somervell, K.C.), and *R. P. Hills*.

Solicitors: *R. G. Percival*; *Solicitor of Inland Revenue*.

[Reported by Miss B. A. Bicknell, Barrister-at-Law.]

COURT OF APPEAL.

Harman *v.* Crilly and A. W. Robey, Ltd.

Lord Greene, M.R., and Goddard, L.J. 11th December, 1942.

Practice and procedure—Third-party notice—Action for negligence—Defendants insured—Whether third-party notice should issue against insurance company—Distinction between trial by judge and jury and trial by judge alone—R.S.C., Ord. 16A, *r.* 1.

Third-parties' appeal from an order made by Croom-Johnson, J., in an action for damages for personal injuries arising out of the alleged negligence of the first defendant in driving a motor vehicle belonging to the second defendant. The defendants had issued a third-party notice against an insurance company, claiming to be entitled to the benefit of a policy issued by the company. The learned judge had ordered that a third-party notice should issue.

Lord Greene, M.R., said that the real substantial point which had been urged was that if the third parties were brought into the action, the fair trial of the action would be liable to be prejudiced, because it would be brought to the mind of the judge that the defendants were, or might be, entitled to the benefit of a contract of insurance. It had been said that there was an invariable practice to refuse to entertain third-party procedure against an insurance company, for reasons stated in various authorities. It was perfectly true that in that court it had more than once been said that where there was to be a trial by a jury the bringing in of the insurance company by a third-party notice was to be discountenanced. *Gowar* v. *Hales* [1928] 1 K.B. 191, was based entirely on the fact that in a jury trial the jury was liable to be prejudiced if it knew that there was in existence a policy of insurance. His lordship attached no particular importance to *Lothian* v. *Epworth Press* [1928] 1 K.B. 199*n*, as qualifying the rule in *Gowar* v. *Hales*, as that was a case of special circumstances. In *Carpenter* v. *Ebblewhite* [1939] 1 K.B. 347, it was argued that one reason for striking out a claim against an insurance company was that the presence of the insurance company in the action would be liable to prejudice the claim by the plaintiff against the main defendant, and Greer, L.J., at p. 359 of [1939] 1 K.B. said that that reasoning did not appeal to him, because "since the time when it had been provided by statute that every owner of a motor-car must be insured, that matter would be present to the minds of the jury just as much, though not a word was said about it, as if it was proclaimed from the house-tops." The position of the authorities was that even in the case of juries the question was at least an open one, and his lordship protested against the imputation that a precaution which was intended for the special case of juries was required in the case of a judge sitting alone. The judgment of Slesser, L.J., in *Carpenter* v. *Ebblewhite*, *supra*, was based on the fact that juries were liable to be prejudiced by having that class of information before them, but did not justify the proposition that the principle was to be applied where the trial was to be before a judge alone, and he did not agree with the judgment so far as it said that that was so. His lordship expressed no opinion as to what might be the proper practice if and when jury trials in that class of action were resumed, but the weighty observations of Greer, L.J., would have to be considered. The appeal would be dismissed.

Goddard, L.J., delivered judgment to the same effect.

Counsel: *H. D. Samuels*, K.C., and *F. W. Wallace*; *Percy Lamb*.

Solicitors: *G. A. Hathaway*, agent for *Flint, Bishop & Barnett*, Derby.

[Reported by Maurice Share, Esq., Barrister-at-Law.]

War Legislation.

Statutory Rules and Orders, 1943.

E.P. 20. **Apparel and Textiles.** Cloth (Making-up and Use) (No. 18) Directions, Feb. 5.

E.P. 218. **Control of Fuel** Order, Feb. 10.

E.P. 227. **Fish** (Port Allocation Committees) Order, 1942. Amendment Order, Feb. 12.

E.P. 157. **Hire-Purchase** (Control) Order, Feb. 4.

E.P. 213. **Livestock** (Sales) Order, Feb. 10.

E.P. 233. **Milk** (Control of Supplies) and Milk (Control of Supplies) (Scotland) Orders, 1942. Amendment Order, Feb. 12, giving supplementary directions.

No. 206. **Minister of Town and Country Planning** (Transfer of Powers) (No. 1) Order in Council, Feb. 10.

No. 219. **Post Office.** Inland Post Amendment (No. 5) Warrant, Feb. 10. (Flowers and Plants.)

E.P. 232. **Railways.** Transport of Flowers Order, Feb. 13.

No. 205. **Record Office, England.** Order in Council, Feb. 10, approving Additional Rule extending to the Ministry of Fuel and Power the Rules for the Disposal of Valueless Documents.

No. 215/L.6. **Supreme Court, England.** Procedure. Principal Probate Registry (Personal Applications) Order, Feb. 10.

Land Registry.

Land Registration Form A5. Application for Registration of a Dealing with Part of the Land comprised in a Registered Title.

Court Papers.

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION.

Hilary Sittings, 1943.

Rota of Registrars in attendance on

Date.			Emergency Rota.	Appeal Court I.	Mr. Justice Farwell
Monday,	Mar.	1	Mr. Jones	Mr. Reader	Mr. Baker
Tuesday,	,,	2	Hay	Blaker	Andrews
Wednesday,	,,	3	Reader	Andrews	Jones
Thursday,	,,	4	Blaker	Jones	Hay
Friday,	,,	5	Andrews	Hay	Reader
Saturday	,,	6	Jones	Reader	Blaker

Date			Group A. Mr. Justice Bennett *Non-Witness*	Mr. Justice Simonds *Witness*	Group B. Mr. Justice Morton *Witness*	Mr. Justice. Uthwatt *Non-Witness*
Monday,	Mar.	1	Mr. Hay	Mr. Reader	Mr. Jones	Mr. Andrews
Tuesday,	,,	2	Reader	Blaker	Hay	Jones
Wednesday,	,,	3	Blaker	Andrews	Reader	Hay
Thursday,	,,	4	Andrews	Jones	Blaker	Reader
Friday,	,,	5	Jones	Hay	Andrews	Blaker
Saturday,	,,	6	Hay	Reader	Jones	Andrews

Honours and Appointments.

The Colonial Legal Service announce the following appointments: Captain G. Callow, Crown Counsel, Sierra Leone, to be Assistant Judge, Nigeria; and Mr. G. J. Horsfall, Crown Council, Nigeria, to be Crown Counsel, Sierra Leone.

Sir Edward Jackson, Lieutenant-Governor of Malta, has been appointed Chief Justice of Cyprus in succession to Sir Bernard Crean, who has retired. Sir Edward Jackson left Malta in September, 1942, for reasons of health. Sir Edward was called by the Inner Temple in 1910.